

**REMARKS**

Claims 1-3, 5, 8, 10 and 11 are pending in this application. By this Amendment, new claim 11 is added. Support for the new claim can be found, for example, in the specification (see claims 7 and 9). No new matter is added.

Applicants appreciate the courtesies shown to Applicants' representative by Examiners Love and Blanchard in the January 20, 2010 personal interview. Applicants' separate record of the substance of the interview is incorporated into the following remarks.

In view of the foregoing amendments and the following remarks, reconsideration and allowance of the claims are earnestly solicited.

**I. Rejection Under 35 U.S.C. §103**

The Office Action rejects claims 1-3 and 5-10 under 35 U.S.C. §103(a) over U.S. Patent No. 6,242,499 to Gruning et al. ("Gruning"). Applicants respectfully traverse the rejection.

Claim 1 recites:

A cosmetic comprising a hydroxyl compound obtained by reaction of a di- or a higher-valent alcohol with a monovalent carboxylic acid and dimer acid, wherein the hydroxyl compound is obtained by reacting diglycerin with isostearic acid, and then reacting the obtained ester compound with dimer acid, and that a molar ratio among diglycerin, isostearic acid, and dimer acid is 1.0 : 1.4 to 1.6 : 0.5 to 0.8;  
has a hydroxyl value in a range of from 30 to 80;  
a viscosity at 60 degrees C of the hydroxyl compound is in a range of from 2,500 to 10,000 mPa.s; and  
a number of average molecular weight of the hydroxyl compound is in a range of from 2,000 to 7,000.

Gruning would not have rendered obvious each and every feature of claim 1 at least because Gruning does not disclose or render obvious a hydroxyl compound obtained by reacting diglycerol with isostearic acid.

More specifically, of the various components that comprise the polyglycerol of Gruning, as listed by percent distribution, triglycerol is present in the greatest amount (Gruning, col. 3, line 28). Such a presence of triglycerol causes at least the following results to occur: (1) a hydroxyl compound having a high viscosity despite a low molecular weight; and (2) a hydroxyl compound having a large hydroxyl value, as compared to a hydroxyl compound derived from diglycerol, as recited in claim 1.

As discussed during the January 20, 2010 interview, in support of these differences between a hydroxyl compound derived from triglycerol, versus one derived from diglycerol, Comparative Example 1 of Applicants' specification is directed to a hydroxyl compound derived from triglycerol having similar molar ratios (1.0 : 2.0 : 0.2) to those disclosed in Gruning (specification, paragraph [0041]). The following results were measured with respect to Comparative Example 1:

**Table 1: Comparative Example 1 Versus Applicants' Claim 1**

	<b>Comparative Example 1</b>	<b>Applicants' Claim 1</b>
<b>Viscosity [mPa.s at 60°C]</b>	14,900	2,500 to 10,000
<b>Number Average Molecular Weight</b>	2000	2,000 to 7,000
<b>Hydroxyl Value</b>	110.3	30 to 80

As shown in Table 1, a hydroxyl compound obtained from triglycerol results in a significantly higher viscosity (**49% greater** than the maximum endpoint of claim 1) and a significantly higher hydroxyl value (**38% greater** than the maximum endpoint of claim 1) than the compound recited in claim 1.

Furthermore, additional comparative tests also reveal a number of performance-based differences with respect to a Comparative Example directed to a hydroxyl compound derived from triglycerol having similar molar ratios (1.0 : 2.0 : 0.2) to those disclosed in Gruning.

First, the product of the Comparative Example, derived from triglycerol, is compatible with a smaller number of oils (page 25, Table 2-2). In particular, turbidity or slight separation was observed in Comparative Example 1 with respect to four oily bases.

Second, the Comparative Example demonstrated poorer water-holding or moisturizing properties with respect to a compound prepared according to claim 1. The Comparative Example had a water-holding property of at least 200% to less than 300%, as compared with at least 300% for a compound prepared according to claim 1 (page 28, Table 3).

Third, the Comparative Example demonstrated less compatibility with amide- or ester-terminated polyamide resins. Turbidity or slight separation was observed with polyamide resins as a thickener (pages 30-31, Tables 4-1 and 4-2).

Fourth, the Comparative Example demonstrated poorer practical properties and storage stability in emollient creams (page 39, Comparative Example 2, Table). Specifically, the Comparative Example resulted in an average score of 2.5 to 3.4, as rated on a scale of 0 to 5 by twenty subjects (ten males and ten females). With respect to storage stability, the Comparative Example was stored at 45°C in a temperature-controlled room for three months; then at -5°C for one day; and then at 45°C for two days (page 35, lines 15-22). This process was repeated 5 times. At its conclusion, compositional separation was observed in the Comparative Example.

Fifth, the Comparative Example demonstrated poorer practical properties and storage stability in suncreams (page 40, Comparative Example 3, Table). The Comparative Example resulted in an average score of 2.5 to 3.4, as rated on a scale of 0 to 5 by twenty subjects (ten males and ten females).

Sixth, the Comparative Example demonstrated poorer practical properties and bad storage stability in lip creams (page 51, lines 1-12). Particularly, the Comparative Example exhibited perspiration and poor storage stability, and the comparative lip cream exhibited a large change in hardness with a change in temperature. More specifically, the hardness was measured to be 0.65 N at 5°C, 0.22 N at 25°C; and 0.08 N at 35°C. Furthermore, the lip cream prepared with Comparative Example 1 had drawbacks such as bad spreadability and a sticky feeling upon application

Gruning provides no reason or rationale for one of ordinary skill in the art to have eliminated triglycerol from its polyglycerol composition in favor of diglycerol. Nor does Gruning provide any indication that the above results could or would be attained by such a specific selection of the polyglycerol compound.

Thus, for at least the reasons set forth above, claim 1 would not have been rendered obvious by Gruning. The remaining claims variously depend from claim 1 and, thus, would also not have been rendered obvious. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

## **II. New Claim**

By this Amendment, new claim 11 is added. New claim 11 is directed to a lipstick composition having features similar to the features recited in claim 1. New claim 11 is believed to be patentable over Gruning for at least the reasons discusses above with respect to claim 1, as well as for the additional reasons presented below.

Gruning discloses polyglycerol esters that may be used in the preparation of cosmetic or pharmaceutical preparations, such as skin care creams, baby creams or sun-protection creams, ointments and lotions (Gruning, col. 3, line 62 to col. 4, line 5). However, Gruning does not disclose a lipstick composition wherein, *inter alia*, a viscosity at 60 degrees C of the hydroxyl compound is in a range of from 2,500 to 10,000 mPa.s, and a number average

molecular weight of the hydroxyl compound is in a range of from 2,000 to 7,000, as recited in claim 11.

Further, Gruning provides no reason or rationale for one of ordinary skill in the art to have modified the disclosure of Gruning in the exact manner necessary to obtain Applicants' claimed lipstick composition, without the benefit of Applicants' specification and undue experimentation.

Prompt examination and allowance of new claim 11 are respectfully requested.

### **III. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the claims are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Attachments:

Petition for Extension of Time  
Request for Continued Examination

Date: March 15, 2010

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